IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

Crl.MC.No. 4058 of 2006()

AGAINST THE ORDER IN CC 358/2004 IN
LP.141/2006 of JUDL.MAGISTRATE OF FIRST CLASS, KAYAMKULAM

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PETITIONER: ACCUSED NO.1

NOUSHAD, AGED 31 YEARS,
S/O.ABOOBACKER KUNJU, THEKKE MANNOOKUNNIL
MANESSERIL HOUSE, CHERUVALLY, KAYAMKULAM.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENTS: STATE AND COMPLAINANT

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1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUNITHA @ KAMEESHA, AGED 26 YEARS,
D/O.ABDUL AZEEZ, KOTTEPARAMBIL HOUSE,
PERINGALA MURI, KAYAMKULAM VILLAGE,
ALAPPUZHA DISTRICT.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.4058 of 2006

Dated this the 23rd day of January, 2007

ORDER

The petitioner has come to this Court with a prayer to quash proceedings initiated against him under Section 498 A I.P.C. Cognizance has been taken and the case is pending before the learned Judicial First Class Magistrate, Kayamkulam. Initially it was numbered as C.C.No.358 of 2004. All the co-accused were acquitted. As the petitioner was not available, the case against him was split up and is now pending as L.P.C.No.141 of 2006.

2. The learned counsel for the petitioner submits that the matter is settled between the parties as per Annexure-B agreement executed on 23.09.2005. In these circumstances, the counsel prays that the prosecution pending against him may be quashed.

3. Sufficient time was given to the petitioner to ensure the appearance of the 2nd respondent and to file a joint application to report to the Court that the disputes between the parties have been settled. No such settlement is so reported.

4. The offence under Section 498 A I.P.C is not legally compoundable. Notwithstanding the fact that the offence is not compoundable, in an appropriate case, it is certainly open to the Court to invoke its powers under Section 482 Cr.P.C to quash the

proceedings invoking the dictum in **B.S.Joshy v. State of Haryana** [A.I.R (2003) S.C 1386]. But when there is no confirmation of the fact of settlement by the defacto complainant, it would be presumptuous on the part of this Court to accept and act upon Annexure-B to come to the conclusion that the matter has been settled and thereafter proceed to invoke the powers under Section 482 Cr.P.C. That prayer cannot certainly be accepted. If the matter is settled, It is for the petitioner to prove that fact before the learned Magistrate and claim whatever advantage arises from such alleged settlement. The prayer for quashing of proceedings cannot in these circumstances be accepted.

5. The learned counsel for the petitioner then submits that at any rate, there may be a direction to the learned Magistrate to release the petitioner on bail when he appears and applies for bail before the learned Magistrate.

6. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate and seek bail. In such application for bail, the petitioner can certainly bring to the notice of the learned Magistrate that the matter has actually been settled as per Annexure-B agreement. It is for the Magistrate to pass appropriate orders on

merits. I find no reason to assume that the learned Magistrate would not consider the application for bail on merits, in accordance with law and expeditiously. Every court must do the same. It is not necessary to issue any special or specific directions. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

7. In the result, this Crl.M.C is, dismissed. But with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the learned counsel for the complainant, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself, unless there are exceptional and sufficient reasons. The petitioner shall be entitled to surrender before the learned Magistrate and seek bail on 31.01.2007. The petitioner shall not be arrested till that day.

(R.BASANT, JUDGE)

rtr/